

REMARKS

In the first Office Action, mailed 5-20-05, Independent Claims 1, 6 and 17 were rejected under 35 USC § 103(a) as being unpatentable over Schuster et al (US Pat. No. 6,360,271) (Hereinafter Schuster) in view of Surazski et al (US Pat. No. 6,657,893) (Hereinafter Surazski). All three independent claims were rejected for the same reasoning. Applicant believes that for technical reasons relating to the field of Internet based communications, that Surazski and Schusters cannot be properly combined. Accordingly Applicant requested a telephone interview to clarify applicant's view of his technical reasoning.

The Examiner graciously granted a Telephone Interview to allow applicant an opportunity to present his reasoning. The subject of the interview was limited to only Claim 1 as related to Schuster and Surazski.

The interview was held on July 26 at 2:00 pm EST with the Examiners, Vaughn and Doan; Inventor Shawn Smith, inventor's supervisor Debra Kirchhoff; and Inventor's representative, Mark Rodgers in attendance.

The following reasoning was presented in re Claim 1:

1. Jitter buffer element, audio application element, and packetizer element, as presented in Claim 1 are asserted by the examiner as found in Schuster. Applicant agrees that this assertion is essentially correct.
2. Internet bandwidth estimator and comparator elements are asserted by Examiner to be found in Schuster, specifically col. 4, lines 29-32 and col. 5 lines 27-38. In the col. 4 section, an Internet bandwidth delay measuring element is identified. In the col. 5 section, the element is specifically defined as "...delay may be measured, for example, by comparing packet departure time with packet arrival time (or other benchmarks or time stamps provided at the transmitting and receiving ends)...." Thus in Schuster, absolute transmission time and departure time for each packet are required to measure delay. In practice, to provide a

meaningful delay measurement, clocks at the receiving and transmitting ends would have to be highly synchronized, which is why Schuster mentions infrastructure, such as GPS time bases or atomic clocks, to achieve clock synchronization. There is no normal provision for two computers or appliances on the internet to have any correlation at all between their respective clocks, thus requiring significant external infrastructure to practice Schuster. The estimator and comparator of applicant's Claim 1 on the other hand only require successive packet arrival times and the audio duration of each packet in order to estimate Internet bandwidth, thereby providing a practical tool which may be used on any device connected to the internet with no external infrastructure. Thus the estimator of the applicant is not only fundamentally different than the delay measurement element of Schuster, but provides significant benefit as well. Applicant pointed out that this difference alone should be enough to remove the rejection. The examiner pointed out that the audio duration information needs to be present in the packet, and this element was not clearly described in Claim 1.

3. The examiner relies on Surazski to add the estimation increase/decrease functions of Claim 1. Applicant asserted that Surazski relates to true signal bandwidth, which is known and can be allocated by a device practicing Surazski's invention. The "estimate" in Surazski is in fact an allocation of signal bandwidth to clients in a subsequent time interval based on measured actual bandwidth use by those clients in a previous time interval. Thus "bandwidth" in Surazski is fixed and controllable signal bandwidth, while "Internet bandwidth" in applicant's Claim 1 is in fact a measure of instantaneous rate of data reception, not controllable or fixed in any way. Internet signal bandwidth is constant, but does not directly relate to actual data transfer rates. "Estimate" in Surazski is an allocation of future bandwidth, while in applicants Claim 1 estimate is an estimate, based on one sided information only of past data reception rate. The terms "Bandwidth" and "estimate" in Schuster do have corresponding meanings to applicant's terms. Thus the terms "bandwidth" and "estimate" do not have the same meaning in Surazski as in applicant's claim 1 and Schuster, and therefore Surazski should not

be combined with Schuster to add elements missing in Schuster. The examiner asked for clarification that no allocation of Internet bandwidth is implied in applicant's claims. Internet bandwidth cannot typically be allocated by devices connected to the net, so no allocation is implied or even possible.

4. The examiner asked for a written summary of the interview and a reply to the action. The examiners also indicated that they understood the reasoning presented in re Claim 1 but still had possible issues with Claim 4.

Therefore in light of the above discussion, applicant has amended independent Claims 1 and 6 to more distinctly point out the presence of audio information data in the packets. This distinction is already present in independent claim 17. Claims 4, 13-16, and 19 have been cancelled in light of the examiner's comments in re claim 4. The rejection of the remaining dependent claims, if the independent claims are allowable, should then also be removed.

Thus in light of the preceding remarks and amendments we respectfully request that the subject application be allowed in Currently Amended form.

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Respectfully Submitted,



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